

2006

State of Utah v. Robert Weaver : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
	:	
Plaintiff/Appellant,	:	Case No. 20060801-CA
	:	
v.	:	
	:	
ROBERT WEAVER,	:	
	:	Defendant is not incarcerated
Defendant/Appellee.	:	

BRIEF OF APPELLANT

APPEAL FROM AN ORDER DISMISSING WITH PREJUDICE AN ENHANCED CHARGE OF POSSESSION OF A CONTROLLED SUBSTANCE, A CLASS A MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN. § 58-37-8(2)(a)(i) (WEST SUPP. 2006), DRIVING UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS, A CLASS B MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN. § 41-6-44 (WEST 2004), AN ENHANCED CHARGE OF POSSESSION OF DRUG PARAPHERNALIA, A CLASS A MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN. § 58-37A-8(2)(a)(i) (WEST 2004), AND FALSE REGISTRATION, A CLASS C MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN. § 41-1a-1305(3) (WEST 2004), IN THE FIFTH JUDICIAL DISTRICT COURT IN AND FOR WASHINGTON COUNTY, THE HONORABLE JAMES L. SHUMATE PRESIDING

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ORAL ARGUMENT REQUESTED **UTAH APPELLATE COURT**

FILED
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BRIEF OF APPELLANT

- - - - -

JURISDICTION AND NATURE OF THE PROCEEDINGS

This is an appeal from an order dismissing with prejudice an enhanced charge of possession of a controlled substance, a class A misdemeanor, in violation of UTAH CODE ANN. § 58-37-8(2)(a)(i) (West Supp. 2006), driving under the influence of alcohol and/or drug, a class B misdemeanor, in violation of UTAH CODE ANN. § 41-6-44 (West 2004), an enhanced charge of possession of drug paraphernalia, a class A misdemeanor, in violation of UTAH CODE ANN. § 58-37a-8(2)(a)(i) (West 2004), and false registration, a class C misdemeanor, in violation of UTAH CODE ANN. § 41-1a-1305(3) (West 2004), in the Fifth Judicial District Court in and for Washington County, the Honorable James L. Shumate presiding. This Court has jurisdiction of this appeal pursuant to UTAH CODE ANN. § 78-2a-3(2)(e) (West 2004) and UTAH CODE ANN. § 77-18a-1(3)(b) (West Supp. 2006).¹

¹ Citation in this brief is to the most recent version of the Utah Code, unless otherwise indicated. Section 41-6-44 has been renumbered as section 41-6a-502. 2005 Utah Laws c. 2, § 58.

STATEMENT OF THE ISSUE, PRESERVATION, AND STANDARD OF REVIEW

The sole issue on appeal is:

Whether the trial court incorrectly concluded that the traffic stop was unjustifiably prolonged when the deputy asked defendant to exit his car to explain the existing problem with his license plates?

Preservation: This issue was preserved by defendant's motion to suppress evidence. R29-43.

Standard of Review: The appellate court reviews the district court's factual findings underlying its denial of a defendant's motion to suppress under a clearly erroneous standard. *See State v. Callahan*, 2004 UT App 164, ¶ 5, 93 P.3d 103. "In contrast, [the appellate court] review[s] 'the trial court's conclusions of law based on such facts under a correctness standard, according no deference to the trial court's legal conclusions.'" *State v. Duran*, 2005 UT App 409, ¶ 10, 131 P.3d 246 (citation omitted).

CONSTITUTIONAL PROVISION AND STATUTE

The Fourth Amendment to the United States Constitution and UTAH CODE ANN. § 41-1a-1305 (West 2004) are attached at Addendum A.

STATEMENT OF THE CASE

Defendant was charged with two enhanced counts of possession of a controlled substance (Count 1—cocaine; Count 2—marijuana), driving under the influence of alcohol and/or drug (Count 3), an enhanced count of possession of drug paraphernalia (Count 4), and

false registration (Count 5). R1-2. Count 1 was dismissed upon motion by the State. R23. Defendant moved to suppress the evidence. R29-43. The court held an evidentiary hearing February 14, 2006, and heard argument and ruled on March 27, 2006. R101:1-39; 102:1-24. The court granted the motion. R67. On August 1, 2006, the court dismissed the case with prejudice. R88. The State timely appealed on August 28, 2006. R89.

STATEMENT OF FACTS

On the evening of September 6, 2005, Deputy Mike Mitchell of the Washington County Sheriff's Office was on patrol in the city of Washington. R101:4-6, 20, 27. Sergeant Dan Endter, who was also on patrol, advised Deputy Mitchell that he had observed a vehicle stop in the middle of a roadway for no apparent reason. R77; 101:4-5. He also advised Deputy Mitchell that he had checked the vehicle's license plates and found they did not match the make of car. *Id.* Sergeant Endter was transporting a prisoner and could not then make a traffic stop. R101:5. He advised Deputy Mitchell of the car's location and direction of travel so that Deputy Mitchell could make the stop. *Id.*

Deputy Mitchell was near the location and found the suspect car, a Chrysler, near the local Walmart store. R101:5-6, 20. He, too, checked the car's license plates and found they belonged to a Cadillac. R101:6. Deputy Mitchell initiated a stop for possible false registration. R101:27. With his headlights on and his emergency lights activated, Deputy Mitchell pulled up directly behind the Chrysler, which was now parked at Walmart store. R101:6, 21, 27.

Deputy Mitchell approached the driver of the car to determine whether the car might

be stolen. R101:7. Defendant was the driver and there was a passenger with him. R101:7, 13. Deputy Mitchell explained to defendant why he had stopped him. R101:8. He obtained defendant's license, registration, and proof of insurance. R101:24. He also checked the vehicle identification number (VIN) on the dashboard. R101:25. They all matched defendant and the Chrysler. R101:24-25.²

Deputy Mitchell returned to his patrol car with defendant's papers and again checked with dispatch. R101:26. Although dispatch informed him that the licensed plates came back as registered to a Cadillac, Deputy Mitchell responded, "Everything is right with the registration that I have in my hand." R101:26; V:20:46:12-15. At that point, Deputy Mitchell informed dispatch that he would tell defendant to contact the Nevada Division of Motor Vehicles "to get it straightened out" and tell them "something's wrong." V:20:46:43-48.

Deputy Mitchell exited his patrol car, approached defendant, who was still seated in his car, and asked him, "Hey Robert, can you come talk to me for a minute?" R101:26-27; V:20:47:08-15. Defendant immediately said, "Sure," exited his car, and followed the deputy to the rear of the Chrysler. R101:27; V:20:47:16-22. There, Deputy Mitchell began to explain to defendant the problem with his license plates. R101:29; V:20:47:23-42. Within twenty seconds of the commencement of this conversation, Deputy Mitchell smelled alcohol

² From about this point, the encounter was video recorded. The trial court relied on the video in granting the motion to suppress and in making its findings of fact and conclusions of law. R76-78; 102:2-9, 16-17, 19. At the suppression hearing, the videotape was received into evidence as Exhibit 1. The videotape is cited as "V:hr:min:sec."

on defendant's breath and asked defendant if he had been drinking. R101:28-29; V:20:47:41-42. When asked if he had been drinking, defendant said that he had had a beer. V:20:47:45-47.

Deputy Mitchell had defendant perform field sobriety tests and conducted a portable breath test. R101:9-12. Another officer searched the car and found a small glass vial containing suspected cocaine residue, some marijuana, a crack pipe, two marijuana pipes, rolling papers, two razor blades and a lighter. R101:13. Defendant was arrested for possession of controlled substances and drug paraphernalia and for driving under the influence of alcohol and/or drugs. R4; 101:12.

SUMMARY OF ARGUMENT

The trial court failed to *fully* appreciate a basic precept of Fourth Amendment law: Detention must last no longer than is necessary to effectuate the purpose of the stop. Here, the deputy had not fully effectuated the legitimate purpose of the stop. The purpose of the stop was to determine whether defendant was driving with a false registration or whether he might have stolen the car he was driving. After the deputy concluded that defendant's registration appeared to be valid, the stop was not yet complete. Even if no reasonable suspicion existed that the car was stolen, it was only reasonable before concluding the stop that the deputy explain to defendant the still-existing problem defendant had with his license plates. Because defendant could be ordered out of his car at any time during the stop, the deputy's request that defendant do so to receive his explanation had no impact on the legitimate scope of the stop. Thus, because the legitimate purpose of the stop was not

complete until this explanation was given, defendant's right to be free of unreasonable searches and seizures was not violated when the deputy asked him to exit his car.

Additionally, the trial court incorrectly concluded that, once the deputy was satisfied that defendant's car was appropriately registered, continuing the traffic stop by asking defendant to exit his car was unjustified. The court correctly recognized a basic precept of Fourth Amendment law: Once the purpose of an initial traffic stop has been satisfied, detention must cease. The trial court's error stems from its too-narrow application of this precept. The court found that the deputy considered defendant's registration to be valid and that he intended to allow defendant to proceed on his way, even though the license plates that did not correspond to information disseminated by the Nevada Division of Motor Vehicles. However, the court mistakenly assumed that reasonable suspicion that the car might have been stolen ceased at that point. In fact, whatever the deputy's determination about the registration, the license plates still did not match the car.

ARGUMENT

THE TRIAL COURT INCORRECTLY CONCLUDED THAT THE TRAFFIC STOP WAS UNJUSTIFIABLY PROLONGED WHEN THE DEPUTY ASKED DEFENDANT TO EXIT HIS CAR TO EXPLAIN THE EXISTING PROBLEM WITH HIS LICENSE PLATES

The trial court failed to recognize that the stop was not completed until the deputy had the opportunity to explain the still-existing problem defendant had with his license plates. Additionally the court incorrectly concluded that the traffic stop was unjustifiably prolonged because reasonable suspicion that the car might be stolen still existed when the deputy asked

defendant to exit his car.

A. The purpose of the stop was not effectuated until the deputy explained the still-existing problem defendant had with his license plates that did not match his car.

“Once a traffic stop is made, the detention ‘must be temporary and last no longer than is necessary to effectuate the purpose of the stop.’” *Lopez*, 873 P.2d at 1132 (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983)). “There is no bright-line rule to determine whether the scope of police conduct was reasonably related to the goals of the stop; ‘rather our evaluation is guided by ‘common sense and ordinary human experience.’ ” *United States v. Melendez-Garcia*, 28 F.3d 1046, 1052 (10th Cir.1994) (citing *United States v. King*, 990 F.2d 1552, 1562 (10th Cir. 1993) (quoting *United States v. Montoya de Hernandez*, 473 U.S. 531, 542 (1985) (quoting *United States v. Sharpe*, 470 U.S. 675, 685 (1985)))). “The touchstone of our analysis under the Fourth Amendment is always the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.” *Pennsylvania v. Mimms*, 434 U.S. 108-09 (1977))(internal quotation marks and citations omitted).

The trial court ruled that “as a matter of law that Deputy Mitchell had a reasonable basis to stop defendant’s vehicle based on the discrepancy involving the license plate and the information obtained from dispatch.” *See Findings of Fact and Conclusions of Law* (“Findings and Conclusions,” R76-79, at 78, attached at Addendum B).³ R The court then

³ Although defendant argued in his motion to suppress that the initial stop was not legally justified, he neither renewed his claim nor objected when the court announced its contrary conclusion at the close of argument. R34; 102:22.

ruled that

[t]he reasonable suspicion ceased when Deputy Mitchell made the determination that the information was valid and he informed dispatch that he intended to return the defendant's license and registration and tell him to contact Nevada DMV. The extended inquiry, wherein the [d]efendant was asked to exit his vehicle, was a violation of his [F]ourth [A]mendment constitutional rights against unlawful searches and seizures. Officer Mitchell offered no reasonable articulable suspicion at the hearing or at the time of the detention that the defendant had committed or was about to commit a crime or to explain his need for further inquiry. Any further detention for questioning after the initial fulfillment of the purpose of the initial traffic stop, which was to inquire about the registration, was not justified under the [F]ourth [A]mendment.

R78-79.

Here, the trial court mistakenly conflated two distinct points of the stop: the point at which Deputy Mitchell dispelled reasonable suspicion that the registration was false and the point at which the purpose of the stop was effectuated, that is, completed. Although no bright-line rule exists for determining when a stop is completed, courts generally recognize certain factors, such as the return of the detainee's license or the issuance of a citation, as determinative. *See State v. Castner*, 825 P.2d 699, 705 (Utah Ct. App. 1992) (detainee's driver's license had been returned and the citation issued). *See also United States v. White*, 81 F.3d 775, 778 (8th Cir.) (explaining warning ticket and returning license and registration to driver ended the initial traffic stop), *cert. denied*, 519 U.S. 1011 (1996); *People v. Ramsey*, 839 N.E.2d 1093, 1100 (Ill. Ct. App. 2005) (purpose of the stop was complete when deputy returned license and insurance card, issued a warning citation for windshield violation, and told detainee that he had 45 days to fix the windshield); *Commonwealth v. Strickler*, 757

A.2d 884, 890, 896-97, 901 (Pa. 2000) (recognizing that endpoint of initial detention at point that officer returned license, issued warning, thanked detainee for his cooperation and began to walk away).

Here, Deputy Mitchell appeared satisfied that, although defendant's license plates did not match his car, the registration was valid, based on the computer check. That the stop was not yet complete, however, is evident from the videotape, which shows that Deputy Mitchell still retained defendant's license, registration, and insurance card when he asked defendant to exit his car. V:20:47:16-22.

More importantly, Deputy Mitchell had not yet fully "effectuate[d] the purpose of the stop." *Royer*, 460 U.S. at 500. The purpose of the stop was to determine whether defendant was driving with a false registration or whether he might have stolen the car he was driving based on the initial observation that defendant's Chrysler had license plates that reportedly belonged to a Cadillac. Even if no reasonable suspicion existed that the car might have been stolen, it was only reasonable before concluding the stop that the deputy explain to defendant the still-existing problem defendant had with his license plates. The deputy was fully justified in requesting defendant to exit his car as a normal incident of a traffic stop. *Mimms*, 434 U.S. 106, 111 n.6 (1977) (no violation of Fourth Amendment's proscription of unreasonable searches and seizures to ask driver to get out of his vehicle and rejecting that such exit constituted an "impermissible seizure"). *See State v. Silva*, 11 P.3d 44, 49 (Idaho Ct. App. 2000) (asking motorist to exit his vehicle in preparation for handing and explaining the ticket to him was within the police officer's discretion during a traffic stop and did not

violate the Fourth Amendment) (citing *Mimms*, 434 U.S. at 111 n. 6).

Even more particularly, Deputy Mitchell was fully justified in asking defendant to exit his car to explain to defendant the problem with his mismatched license plates. In *Commonwealth v. Dales*, an officer was parked at an exit ramp of the Pennsylvania Turnpike, where he was looking for vehicles with excessive window tint, a violation of state statute. 820 A.2d 807, 809, 812 (Pa. Super. 2003). He stopped Dales' car, which had heavily tinted side and rear windows. *Id.* at 809-10. Dales, the driver, lowered his window, at which point the officer observed several newly opened air fresheners hanging in the car. *Id.* at 810. The officer requested Dales' driver's license, registration, and insurance card and returned to his patrol car to verify them. *Id.* Satisfied that all of Dales' documents were in order, the officer returned to Dales' car and requested that he follow him to his patrol car, with which Dales complied. *Id.* There, by using his vehicle as an example, the officer instructed Dales on the permissible amount of tint and what Dales needed to do correct the problem. *Id.* This conversation lasted about twenty to thirty seconds. *Id.* at 814. The officer then returned Dale's papers to him along with a warning regarding the excessive tint. *Id.* Thereafter, the officer continued to question Dales about his travel and his passengers, ultimately asking Dales if he could search the car. *Id.* at 812. The Pennsylvania appellate court held that the detention stemming from this continued questioning was beyond the scope of reasonable suspicion of further criminal activity. *Id.* at 814-15. In so holding, however, the court also concluded that the entire initial sequence of events, including the officer's request that Dales exit his car and the officer's brief instruction concerning the excessive tint of Dales'

windows, were within the valid scope of the initial stop and that the purpose of that stop reasonably ended only when the officer then returned Dales' papers to him with a warning. *Id.* at 813-14.

The undisputed facts in this case require the same result as in *Dales*. Indisputably, defendant was legitimately stopped for a possible registration and license plate violation.⁴ Although defendant's registration appeared valid, the license plate on his car did not match information being supplied by the Nevada DMV. R101:6. As soon as Deputy Mitchell appeared satisfied that the registration was valid, he approached defendant, not to detain him on any alleged suspicion of other unrelated criminal activity, but to explain the still-existing problem with the discrepant license plates. V:20:47:08-42.

As *Royer*, *Mimms* and *Dales* show, asking defendant to exit his car for that limited purpose was within the scope of the initial detention. Deputy Mitchell had defendant out of the car for only twenty-six seconds when, in the midst of his explanation about the license plate problem, he smelled alcohol on defendant's breath. V:20:47:16-42. In sum, the trial

⁴ UTAH CODE ANN. § 41-1a-1305 (West 2004), provides:

It is a class C misdemeanor:

. . . .

(4) to use or permit the use or display of any license plate, registration card, or permit upon or in the operation of any vehicle other than that for which it was issued;

court incorrectly applied the law by failing to recognize that, even though the deputy appeared satisfied that defendant's registration was valid, the purpose of the stop had not been effectuated before the deputy justifiably asked defendant to exit his car to receive an explanation concerning the still-existing problem with his mismatched license plates.

B. Reasonable suspicion existed that the car might be stolen even after the deputy resolved that the registration appeared valid.

“To determine whether a search or seizure is constitutionally reasonable, [the appellate court] make[s] a dual inquiry: (1) Was the police officer's action ‘justified at its inception’? and; (2) Was the resulting detention ‘reasonably related in scope to the circumstances that justified the interference in the first place’?” *State v. Shepard*, 955 P.2d 352, 355 (Utah Ct. App. 1998)) (quoting *State v. Lopez*, 873 P.2d 1127, 1131-32 (Utah 1994) (quoting *Terry v. Ohio*, 392 U.S. 1, 9 (1968))). “‘Investigative questioning that further detains the driver must be supported by reasonable suspicion of more serious criminal activity. Reasonable suspicion means suspicion based on specific, articulable facts drawn from the totality of the circumstances facing the officer at the time of the stop.’ ” *State v. Despain*, 2003 UT App 266, ¶ 17, 74 P.3d 1176 (citations omitted), *cert. denied*, 84 P.3d 239 (Utah 2004). “Once a traffic stop is made, the detention ‘must be temporary and last no longer than is necessary to effectuate the purpose of the stop.’ ” *Lopez*, 873 P.2d at 1132 (quoting *Royer*, 460 U.S. at 500). “Importantly, even if reasonable suspicion arises, the scope of the stop is still limited, . . . and officers must “diligently pursue[] a means of investigation that [is] likely to confirm or dispel their suspicions quickly, during which time it [is] necessary to

detain the defendant.” *Layton City v. Oliver*, 2006 UT App 244, ¶ 15, 139 P.3d 281 (quoting *United States v. Sharpe*, 470 U.S. 675, 686 (1985)) (additional citations omitted). Further, an officer can also order an individual who is lawfully detained “to get out of the vehicle without violating the Fourth Amendment’s proscription of unreasonable searches and seizures.” *Mimms*, 434 U.S. at 111 n.6.

The trial court mistakenly concluded that “[t]he reasonable suspicion ceased when Deputy Mitchell made the determination that the [registration] information was valid” R78-79. “The assessment of whether reasonable suspicion exists is an objective standard based on the totality of the circumstances.” *State v. Singleton*, 2005 UT App 464, ¶ 13, 128 P.3d 28 (quoting *State v. Struhs*, 940 P.2d 1225, 1228 (Utah Ct. App. 1997)); *State v. Alvarez*, 2006 UT 61, ¶ 15, 147 P.3d 425 (citing *State v. Warren*, 2003 UT 36, ¶¶ 19-20, 78 P.3d 590).

Here, Deputy Mitchell was apparently satisfied that defendant’s papers were in order and stated that he intended to simply inform defendant that he should inform Nevada DMV about the problem with the mismatched license plates. R101:26; 102:6; V:20:46:12-15, 43-48. Nevertheless, objective articulable facts supporting reasonable suspicion that the car was stolen still existed: The license plates still did not match the car defendant was driving. As Deputy Mitchell testified at the hearing, the possibility still existed that “[defendant was] not giving [him] straight answers,” justifying his separating defendant from the passenger. R101:30. Having defendant exit the car to discuss the mismatched plates for approximately twenty seconds was well within the scope of a detention based on objectively reasonable

suspicion that the car might yet be stolen. V:20:47:23-42. Indeed, even apart from reasonable suspicion, the deputy was justified in directing defendant to exit his car. *Mimms*, 434 U.S. at 111 n.6.

In sum, the trial court incorrectly concluded that there existed no reasonable suspicion to detain defendant once Deputy Mitchell appeared satisfied that the registration was valid. However, even if no reasonable suspicion existed of further criminal activity, the deputy was still justified in requesting defendant exit his car because the purpose of the stop had not been completed.

CONCLUSION


The State requests that this Court vacate the trial court's ruling granting defendant's motion to suppress evidence and that the case be remanded to the trial court for further proceedings consistent with this Court's holding.

ORAL ARGUMENT REQUESTED

The State requests oral argument. “[O]ral argument is a tool for assisting the appellate court in its decision making process,” *Perez-Llamas v. Utah Court of Appeals*, 2005 UT 18, ¶ 10, 110 P.3d 706, and “the only opportunity for a dialogue between the litigant and the bench.” *Moles v. Regents of University of California*, 187 Cal. Rptr. 557, 560 (Cal. 1982). In the case at bar, the decisional process would “be significantly aided by oral argument.” Utah R. App. P. 29(a).

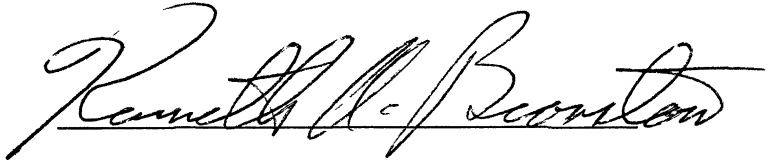
RESPECTFULLY SUBMITTED this ^{uk}2 day of April, 2007.

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CERTIFICATE OF MAILING

I hereby certify that two true and accurate copies of the foregoing Brief of Appellant were mailed, postage prepaid, to defendant Robert Weaver, attorney pro se, 5688 North 1320 West, St. George, Utah 84770, this nd 2 day of April, 2007.



Addenda

Addendum A

The Fourth Amendment to the United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

UTAH CODE ANN. § 41-1a-105 (West 2004) - License plate and registration card violations - Class C misdemeanor

It is a class C misdemeanor:

- (1) to break, injure, interfere with, or remove from any vehicle any seal, lock, or device on it for holding or displaying any license plate or registration card attached for denoting registration and identity of the vehicle;
- (2) to remove from any registered vehicle the license plate or registration card issued or attached to it for its registration;
- (3) to place or display any license plate or registration card upon any other vehicle than the one for which it was issued by the division;
- (4) to use or permit the use or display of any license plate, registration card, or permit upon or in the operation of any vehicle other than that for which it was issued;
- (5) to operate upon any highway of this state any vehicle required by law to be registered without having the license plate or plates securely attached, and the registration card issued by the division carried in the vehicle, except that the registration card issued by the division to all trailers and semitrailers shall be carried in the towing vehicle;
- (6) for any weighmaster to knowingly make any false entry in his record of weights of vehicles subject to registration or to knowingly report to the commission or division any false information regarding the weights;
- (7) for any inspector, officer, agent, employee, or other person performing any of the functions required for the registration or operation of vehicles subject to registration, to do, permit, cause, connive at, or permit to be done any act with the intent, or knowledge that the probable effect of the act would be to injure any person, deprive him of his property, or to injure or defraud the state with respect to its revenues relating to title or registration of vehicles;
- (8) for any person to combine or conspire with another to do, attempt to do, or cause or allow any of the acts in this chapter classified as a misdemeanor;
- (9) to operate any motor vehicle with a camper mounted on it upon any highway without displaying a current decal in clear sight upon the rear of the camper, issued by the county assessor of the county in which the camper has situs for taxation;
- (10) to manufacture, use, display, or sell any facsimile or reproduction of any license plate issued by the division or any article that would appear to be a substitute for a license plate;
or
- (11) to fail to return to the division any registration card, license plate or plates, decal, permit, or title that has been canceled, suspended, voided, or revoked.

Addendum B

Robert Weaver
5688 N 1320 W
St. George, UT 84770
674-0377
Defendant in proper person

FIFTH DISTRICT COURT
2006 MAY 22 PM 1:00
WASHINGTON COUNTY

BY _____

FIFTH DISTRICT COURT

WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH,) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW
Plaintiff,)
) Case No.. 051501358 FS
vs.)
)
ROBERT WEAVER,)
) Judge: James L. Shumate
Defendant.)

A hearing was held on February 16, 2005 on the Defendant's Motion to Suppress. Present to testify at the suppression hearing was the Defendant Robert Weaver and Officer Mike Mitchell of the Washington County Sheriff's Office. Also present at the hearing was Zachary Weiland, Deputy Washington County Attorney. Said hearing was continued until March 27, 2006 to allow the Court to review the videotape of the traffic stop taken by Officer Mitchell. *The Court, having considered the testimony presented at the hearing and the videotape stipulated into evidence, makes the following findings of fact and conclusions of law.*

FINDINGS OF FACT

This Motion pertains to a September 6, 2005 routine traffic stop pertaining to a possible false vehicle registration. Deputy Mitchell was contacted by fellow officer Sgt. Dan Endter regarding a vehicle whose Nevada license plates supposedly did not match that of the vehicle. Sgt. Endter asked Deputy Mitchell to assist because Sgt. Endter was transporting a prisoner at that time and was unable to stop the vehicle at that time. Sgt. Endter informed Deputy Mitchell that the license plate came back to a Cadillac and the vehicle was a white Chrysler.

Deputy Mitchell found the vehicle and ran the license plate through Saint George Dispatch. Dispatch informed Deputy Mitchell that the vehicle's license plate came back as a Cadillac.

Deputy Mitchell activated his overhead lights and proceeded to pull the vehicle over. The vehicle was stopped in the Washington Wal-Mart lot located near exit 10 of I-15. Deputy Mitchell approached the vehicle and asked for license, registration and insurance. The driver was indentified as Robert Weaver by his license.

The testimony of Officer Mitchell and the videotape of the incident indicates that the Defendant produced his driver's license, registration and proof of insurance. These papers appeared to be in proper order and matched the VIN number of the vehicle according to the statements made by Officer at the hearing and on the videotape. A warrant search was also undertaken on the Defendant driver which came back negative. Conversations between dispatch and Officer Mitchell indicated that dispatch ran the license plate and it came back as being registered to a Cadillac rather than a Chrysler.

The videotape starts at 8:42:10 p.m. Defendant's vehicle was stationary with the Sheriff's vehicle directly behind it with lights shining. The tape shows both the defendant and his passenger in the front seat of defendant's vehicle. Deputy Mitchell is heard having a conversation with dispatch on a cellular phone inquiring the status of the vehicle in question.

At 8:46:04 p.m. Deputy Mitchell informed dispatch that everything in his possession checked out as valid and matched the vehicle and that he was going to return the defendant's driver's license, registration and insurance and inform him that he should contact Nevada DMV about the license plate discrepancy.

At 8:47:22 p.m. Deputy Mitchell then approached the defendant's vehicle. Instead of returning the defendant's license and registration, he requested that the defendant exit his vehicle and questioned him further about the license plate issue.

Twenty seconds later, at 8:47:42 p.m., Deputy Mitchell asks the defendant if he had been drinking. Officer Mitchell noticed for the first time an odor of alcohol from defendant's breath. Defendant was arrested after a warrantless search of his vehicle for, inter alia, possession of less than one ounce of marijuana.


CONCLUSIONS OF LAW

The Court finds that as a matter of law that Deputy Mitchell had a reasonable basis to stop the defendant's vehicle based on the discrepancy involving the license plate and the information obtained from dispatch. The reasonable suspicion ceased when Deputy Mitchell made the determination that the information was valid and he informed dispatch that he intended to return the defendant's license and registration and tell him to

contact Nevada DMV. The extended inquiry, wherein the Defendant was asked to exit his vehicle, was a violation of his fourth amendment constitutional rights against unlawful searches and seizures. Officer Mitchell offered no reasonable articulable suspicion at the hearing or at the time of the detention that the defendant had committed or was about to commit a crime or to explain his need for further inquiry. Any further detention for questioning after the initial fulfillment of the purpose of the initial traffic stop, which was to inquire about the registration, was not justified under the fourth amendment. Based on the foregoing,

IT IS HEREBY ORDERED that the defendant's motion to suppress is GRANTED. Any and all evidence obtained after the defendant was asked to exit his vehicle is hereby suppressed.

Dated this 22 day of May, 2006.



Judge James Schumate